

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEBRASKA

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In re:

SPECIALTY RETAIL SHOPS HOLDING
CORP., et al.,¹

Chapter 11

Bankruptcy Case No. 19-80064-TLS
(Jointly Administered)

Debtors.

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**MOTION OF BOWE INDUSTRIES INC. d/b/a CHANGES FOR ALLOWANCE OF
ADMINISTRATIVE CLAIM**

TO: THE HONORABLE THOMAS L. SALADINO
UNITED STATES BANKRUPTCY JUDGE

Bowe Industries Inc. d/b/a Changes (“Changes”), by its attorneys, hereby moves this Court (the “Motion”) for the allowance and payment of its administrative priority claim in the amount of \$31,582.80 pursuant to 11 U.S.C. §503(b)(1). In support of the Motion, Changes states as follows:

Background

1. On January 16, 2019 (the “Petition Date”), each of the above-captioned debtors and debtors in possession (the “Debtors”) filed a voluntary petition for relief in this Court pursuant to Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Specialty Retail Shops Holding Corp. (0029); Pamida Stores Operating Co., LLC (6157); Pamida Transportation, LLC (4219); Penn-Daniels, LLC (0040); Place’s Associates’ Expansion, LLC (7526); Retained R/E SPE, LLC (6679); Shopko Finance, LLC (1152); Shopko Gift Card Co., LLC (2161); ShopKo Holding Company, LLC (0171); ShopKo Institutional Care Services Co., LLC (7112); ShopKo Optical Manufacturing, LLC (6346); ShopKo Properties, LLC (0865); ShopKo Stores Operating Co., LLC (6109); SVS Trucking, LLC (0592). The location of the Debtors’ service address is: 700 Pilgrim Way, Green Bay, Wisconsin 54304.

or examiner has been appointed in these cases.

3. The Debtors' Chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. On or about December 13, 2016, Changes entered into a Vendor Terms/Allowance Agreement (the "Vendor Agreement") with Shopko Stores Operating Co., LLC ("Shopko"), which had an effective date (the "Effective Date") of January 1, 2017. The Vendor Agreement provided that it would automatically renew on the anniversary of the Effective Date unless either party terminates, or an updated Vendor Terms/Allowance Agreement is signed. To date, no updated Vendor Terms/Allowance Agreement has been signed. A copy of the Vendor Agreement is annexed hereto as Exhibit A.

5. Pursuant to the Vendor Agreement, the payments terms (the "Payment Terms") were NET 60. To date, the Payment Terms have not been modified. As such, the net payment for all goods delivered to Shopko by Changes was due within 60 days of the goods being invoiced. Subsequent to the filing of the Debtors' petitions, Changes agreed to continue shipping goods to Shopko. The same Payment Terms as those contained in the pre-Petition Vendor Agreement applied to those goods which were shipped by Changes to Shopko during the post-Petition period.

6. On or about February 28, 2019, goods were shipped from Changes to Shopko, and were invoiced the same day. A copy of the invoices is annexed hereto as Exhibit B. As such, Shopko's claim for payment for said goods did not accrue until April 29, 2019, which was 60 days after invoicing. While the Court entered an order on February 14, 2019 establishing a

deadline of April 1, 2019 for the filing of all administrative claims which accrued prior to April 1, 2019 (the “Administrative Claims Bar Date”), the payment which Shopko owed Changes for the goods which were invoiced on February 28, 2019, did not accrue until April 29, 2019.

Because Shopko’s claim did not accrue until April 29, 2019, Changes’ administrative claim was not subject to the April 1, 2019 Administrative Claims Bar Date. Consequently, this Motion by Changes for Allowance of an Administrative Expense Claim is being timely made.

Relief Requested

7. The invoices annexed hereto reflect a total amount of \$31,582.80 due from Shopko to Changes for goods delivered to Shopko and invoiced on February 28, 2019, no portion of which was paid in accordance with the Vendor Agreement prior to April 29, 2019, nor at any time thereafter. Such amount remains outstanding and unpaid as of the date of this Motion. Consequently, Changes is seeking the entry of an order pursuant to 11 U.S.C. § 503(b)(1) for allowance and payment of administrative expenses in the sum of \$31,582.80.

Basis for Relief Requested

8. Section 503(b)(1)(A) of the Bankruptcy Code provides, *inter alia*, that “there shall be allowed, administrative expenses...including...the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). Section 507(a)(2) of the Bankruptcy Code grants such administrative expense priority as set forth therein. *See* 11 U.S.C. § 507(a)(2).

9. In order to obtain administrative expense status under Section 503(b)(1), a claimant must demonstrate that its claim was an actual and necessary cost or expense of preserving the bankruptcy estate. This test generally requires proof of a benefit to the bankruptcy estate. *In re Burival*, 406 B.R. 548, 555 (B.A.P. 8th Cir. 2009); *aff’d* 613 F.3d 810 (8th Cir. 2010);) (*See also*

In re Pre-Press Graphics Co., 300 B.R. 902, 909 (Bankr. N.D. Ill. 2003), which provides, *inter alia*, that “in order to demonstrate the priority of an administrative claim, the debt must (1) arise out of a transaction with the debtor-in-possession and (2) benefit the operation of the debtor’s business.”). Moreover, the policy behind priority treatment for administrative expenses is to encourage creditors to cooperate with the debtor’s reorganization effort. *In re Pre-Press Graphics Co.*, 300 B.R. at 909.

10. The debt for which Changes seeks administrative expense priority arose out of a post-petition transaction between Changes and Shopko; specifically, a post-petition delivery of goods to Shopko. Moreover, the post-petition delivery of goods benefitted the operation of Shopkos’s business; namely, providing inventory for Shopko to sell enabled it to continue its business operation.

Reservation of Rights

11. Changes reserves the right to amend, revise or supplement its Administrative Claim in any respect as new facts may be developed through investigation, discovery or otherwise, including, without limitation, the right to assert any additional damages, or to assert the Motion against any new or different Debtors. Additionally, this Motion is not intended to be, and shall not be construed as: (1) an election of remedies; (2) a waiver of any defaults; or (3) a waiver or limitation of any rights, remedies, claims or interests that Changes may have against the Debtors or any third parties.

Rule 9013-1 Notice

Please take notice that, pursuant to Local Rule 9013-1(E), any objection or resistance to this Motion for Allowance of Administrative Claim or request for a hearing as to the same, must

be filed with the Bankruptcy Court Clerk – Omaha, Roman L. Hruska Courthouse, 111 18th Plaza, Suite 1125, Omaha, Nebraska 68102 and served on the above-listed creditor on or before July 31, 2019 (the “Resistance Date”). Unless a resistance or request for a hearing is filed and served on or before the Resistance Date, then pursuant to Local Rule 9013-1(D), the Court may enter an order in favor of the moving party.

Dated: Garden City, New York
July 10, 2019

KIRSCHENBAUM & KIRSCHENBAUM, P.C.
Attorneys for Bowe Industries, Inc. d/b/a Changes

By: /s/ Steven B. Sheinwald
Steven B. Sheinwald (admitted pro hac vice)
NY Reg No. 2004463
200 Garden City Plaza, Suite 315
Garden City, NY 11530
Tel: (516) 747-6700
Facsimile: (516) 747-6781
E-mail: steves@kirschenbaumesq.com

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2019, I caused the above document to be filed with the Bankruptcy Court’s CM/ECF system which gave notification electronically upon all parties who filed an appearance or requested notice by electronic filing in this case, and I hereby certify that I have mailed by first class United States mail, postage prepaid, the document to the following non-CM/ECF participants:

None

By: /s/ Steven B. Sheinwald
Steven B. Sheinwald

EXHIBIT A

Run date:12-12-2016	SHOPKO STORES OPERATING CO., LLC.	Report ID: PR0091
Run time:02:41:40 PM	VENDOR TERMS/ALLOWANCE AGREEMENT	Page: 1 of 2

Vendor Name: CHANGES	DVP :JENNIFER LEMIRANDE	*Effective Date: 01-01-2017
Primary Vendor:9340272005	Buyer: DARRIN HOFFMANN	To: 12-31-2017
Secondary Vendor ID(s):		
Department(s): 84 163		

ACCRUAL	% of Receipts	N/A	Method of Payment			Source of Allowance	Bill Frequency	Class Type
			Off invoice	Billback(*)	Auto Bill			
Advertising (POP required)		X						Dept
Branding	1.00			X	X	Receipts	Monthly	Dept
Promotional	2.00			X	X	Receipts	Monthly	Dept
Defective Allowance	0.50			X	X	Receipts	Monthly	Dept
**New Store Allowance	15.00			X	X	Receipts	Monthly	Dept
Remodel Allowance	10.00			X		Receipts	Monthly	Dept
Partnership		X						Dept
Planogram		X						Dept
Volume Rebate		X						Dept

Calculation Method:

Purchase calculation setup:

Bracket #	Purchases up to	Accrual %
1		
2		
3		
4		

**New Store Delivery Count: 3

Freight Terms:

Comments:

BRANDING-BROADCAST PARTNERSHIP

FLAT DOLLAR AMOUNTS	Amt per SKU	Flat \$ Amt	% Receipts	Comments
New Sku Allowance (\$500 minimum per SKU)				
Planogram Allowance (\$25 minimum per SKU)				
Placement/Endcap/Fastrack Allowance				
Partnership Program				
Signage/Visual Allowances				
New Store Allowance				
Other (1)				
Other (2)				
Other (3)				

MARKDOWN AND DEFECTIVE ASSISTANCE

Assistance for markdowns and excessive defectives may be necessary to offset the performance of your product

- Our seasonal gross margin expectation is 42%. Vendor profitability will be discussed on a regular basis and settled quarterly. This is our mutually agreed upon gross margin goal, but does not imply or require a guarantee.
- Excessive Defectives: Vendor is responsible for the cost of the actual defectives that exceed the defective allowance received by Shopko. This is a flat dollar amount and will be deducted as a Billback.
- If no defective allowance, how are the defectives to be handled?

Run date: 12-12-2016
Run time: 02:41:40 PM

SHOPKO STORES OPERATING CO., LLC.

VENDOR TERMS/ALLOWANCE AGREEMENT

Report ID: PR0091
Page: 2 of 2

PAYMENT TERMS

Regular: NET 60

New Store:

Seasonal or Special:

For Billback Programs, Vendor authorizes Shopko Stores Operating Co., LLC to bill vendor monthly for any allowance as set forth hereinafter. Shopko Stores Operating Co., LLC reserves the right to offset these billings against funds currently owed the vendor. If the funds are insufficient, the Vendor agrees to remit such amount within 30 days from the date of billing unless other terms have been agreed upon by Shopko's buyer and the Vendor as noted below. Shopko's Vendor Partnership manual can be found at www.shopko.com/vendors. This manual is updated periodically. It is the vendor's responsibility to review the manual to ensure Shopko's requirements are met.

* This agreement will automatically renew on anniversary of the Effective Date unless either party terminates, or an updated Vendor Terms/Allowance Agreement is signed

Signature

Authorized Signature (must be signed by Merchandising Vice President)

Date

Signature

Authorized Signature (must be signed by an authorized vendor representative)

Date

Print Name MICHAEL AMBROISE

Phone # 718-441-6464

Fax # 718-441-8624

Print Title: NATIONAL ACCOUNTS DIRECTOR

E-Mail: MAMBROISE@CHANGESONLINE.COM

Allowance Billing Information

Attention of: MICHAEL AMBROISE

Phone # 718-441-6464

Fax # 718-441-8624

E-Mail: MAMBROISE@CHANGESONLINE.COM

Address1: 88-36 77TH AVE

Address2:

City: GLENDALE

State: NY

Zip Code: 11385-0000

Collection Method: DEDUCT FROM DOMESTIC PAYMENTS

EXHIBIT B

Invoice Number 1853642
Invoice Date 02/28/19
Invoice From: CHANGES
88-36 77 Avenue
Glendale, NY 11385
(718) 441-6464

Invoice to: SHOPKO STORES
ATTN: ACCOUNTS PAYABLE
P.O. BOX 19045
GREEN BAY WI54307

Ship to: SHOPKO
1717 LAWRENCE DRIVE
DEPERE WI54115

Account Number 414-497-2210
PO Number 018655094A
Terms NET 30 DAYS
Ship Via ABF FREIGHT

QUANTITY AMOUNT	STYLE #	COLOR	SIZE	DESCRIPTION	PRICE
153	99-423-AST			SHOPKO S 6 PK 0	27.90 4,268.70
149	99-424-AST			SHOPKO S 6 PK 6	27.90 4,157.10
93	99-425-AST			SHOPKO S 6 PK 3	27.90 2,594.70
TOTAL OF INVOICE					11,020.50
# CARTONS					395
SHIPPING WEIGHT					1185
TRACKING #					13646739

Invoice Number 1853643
 Invoice Date 02/28/19
 Invoice From: CHANGES
 88-36 77 Avenue
 Glendale, NY 11385
 (718) 441-6464

Invoice to: SHOPKO STORES
 ATTN: ACCOUNTS PAYABLE
 P.O. BOX 19045
 GREEN BAY WI54307

Ship to: SHOPKO
 1717 LAWRENCE DRIVE
 DEPERE WI54115

Account Number 414-497-2210
 PO Number 018655095A
 Terms NET 30 DAYS
 Ship Via ABF FREIGHT

QUANTITY AMOUNT	STYLE #	COLOR	SIZE	DESCRIPTION	PRICE	
24	07-711-14	OXFORD	M	VINTAGE LOGO	4.65	111.60
36	07-711-14	OXFORD	L	VINTAGE LOGO	4.65	167.40
36	07-711-14	OXFORD	XL	VINTAGE LOGO	4.65	167.40
24	07-715-14	OXFORD	2XL	VINTAGE LOGO	4.65	111.60
24	62-711-14	BLACK	M	SUNSET AND GODZI	4.65	111.60
36	62-711-14	BLACK	L	SUNSET AND GODZI	4.65	167.40
36	62-711-14	BLACK	XL	SUNSET AND GODZI	4.65	167.40
24	62-715-14	BLACK	2XL	SUNSET AND GODZI	4.65	111.60
24	30-711-88	ROYAL H	M	RED WHITE BLUE K	4.65	111.60
48	30-711-88	ROYAL H	L	RED WHITE BLUE K	4.65	223.20
48	30-711-88	ROYAL H	XL	RED WHITE BLUE K	4.65	223.20
24	30-715-88	ROYAL H	2XL	RED WHITE BLUE K	4.65	111.60

TOTAL OF INVOICE 1,785.60

CARTONS 32
 SHIPPING WEIGHT 192
 TRACKING # 13646739

Invoice Number 1853644
Invoice Date 02/28/19
Invoice From: CHANGES
88-36 77 Avenue
Glendale, NY 11385
(718) 441-6464

Invoice to: SHOPKO STORES
ATTN: ACCOUNTS PAYABLE
P.O. BOX 19045
GREEN BAY WI54307

Ship to: SHOPKO
1001 E GOWEN ROAD

BOISE ID83716

Account Number 414-497-2210
PO Number 018655094C
Terms NET 30 DAYS
Ship Via UPS FREIGHT

QUANTITY	STYLE #	COLOR	SIZE	DESCRIPTION	PRICE
AMOUNT					
83	99-423-AST			SHOPKO S 6 PK 0	27.90 2,315.70
82	99-424-AST			SHOPKO S 6 PK 6	27.90 2,287.80
62	99-425-AST			SHOPKO S 6 PK 3	27.90 1,729.80
				TOTAL OF INVOICE	6,333.30
				# CARTONS	227
				SHIPPING WEIGHT	681
				TRACKING #	97438937

Invoice Number 1853645
 Invoice Date 02/28/19
 Invoice From: CHANGES
 88-36 77 Avenue
 Glendale, NY 11385
 (718) 441-6464

Invoice to: SHOPKO STORES
 ATTN: ACCOUNTS PAYABLE
 P.O. BOX 19045
 GREEN BAY WI54307

Ship to: SHOPKO
 1001 E GOWEN ROAD
 BOISE ID83716

Account Number 414-497-2210
 PO Number 018655095C
 Terms NET 30 DAYS
 Ship Via UPS FREIGHT

QUANTITY AMOUNT	STYLE #	COLOR	SIZE	DESCRIPTION	PRICE	
12	07-711-14	OXFORD	M	VINTAGE LOGO	4.65	55.80
24	07-711-14	OXFORD	L	VINTAGE LOGO	4.65	111.60
24	07-711-14	OXFORD	XL	VINTAGE LOGO	4.65	111.60
12	07-715-14	OXFORD	2XL	VINTAGE LOGO	4.65	55.80
12	62-711-14	BLACK	M	SUNSET AND GODZI	4.65	55.80
24	62-711-14	BLACK	L	SUNSET AND GODZI	4.65	111.60
24	62-711-14	BLACK	XL	SUNSET AND GODZI	4.65	111.60
12	62-715-14	BLACK	2XL	SUNSET AND GODZI	4.65	55.80
12	30-711-88	ROYAL H	M	RED WHITE BLUE K	4.65	55.80
36	30-711-88	ROYAL H	L	RED WHITE BLUE K	4.65	167.40
36	30-711-88	ROYAL H	XL	RED WHITE BLUE K	4.65	167.40
12	30-715-88	ROYAL H	2XL	RED WHITE BLUE K	4.65	55.80

TOTAL OF INVOICE 1,116.00

CARTONS 20
 SHIPPING WEIGHT 120
 TRACKING # 97438937

Invoice Number 1853646
Invoice Date 02/28/19
Invoice From: CHANGES
88-36 77 Avenue
Glendale, NY 11385
(718) 441-6464

Invoice to: SHOPKO STORES
ATTN: ACCOUNTS PAYABLE
P.O. BOX 19045
GREEN BAY WI54307

Ship to: SHOPKO
10808 S. 132 STREET
OMAHA NE68138

Account Number 414-497-2210
PO Number 018655094B
Terms NET 30 DAYS
Ship Via UPS FREIGHT

QUANTITY AMOUNT	STYLE #	COLOR	SIZE	DESCRIPTION	PRICE
163	99-423-AST			SHOPKO S 6 PK 0	27.90 4,547.70
157	99-424-AST			SHOPKO S 6 PK 6	27.90 4,380.30
46	99-425-AST			SHOPKO S 6 PK 3	27.90 1,283.40
TOTAL OF INVOICE					10,211.40
# CARTONS					366
SHIPPING WEIGHT					1098
TRACKING #					97438935

Invoice Number 1853647
 Invoice Date 02/28/19
 Invoice From: CHANGES
 88-36 77 Avenue
 Glendale, NY 11385
 (718) 441-6464

Invoice to: SHOPKO STORES
 ATTN: ACCOUNTS PAYABLE
 P.O. BOX 19045
 GREEN BAY WI54307

Ship to: SHOPKO
 10808 S. 132 STREET
 OMAHA NE68138

Account Number 414-497-2210
 PO Number 018655095B
 Terms NET 30 DAYS
 Ship Via UPS FREIGHT

QUANTITY AMOUNT	STYLE #	COLOR	SIZE	DESCRIPTION	PRICE	
12	07-711-14	OXFORD	M	VINTAGE LOGO	4.65	55.80
36	07-711-14	OXFORD	L	VINTAGE LOGO	4.65	167.40
36	07-711-14	OXFORD	XL	VINTAGE LOGO	4.65	167.40
12	07-715-14	OXFORD	2XL	VINTAGE LOGO	4.65	55.80
12	62-711-14	BLACK	M	SUNSET AND GODZI	4.65	55.80
36	62-711-14	BLACK	L	SUNSET AND GODZI	4.65	167.40
36	62-711-14	BLACK	XL	SUNSET AND GODZI	4.65	167.40
12	62-715-14	BLACK	2XL	SUNSET AND GODZI	4.65	55.80
12	30-711-88	ROYAL H	M	RED WHITE BLUE K	4.65	55.80
12	30-711-88	ROYAL H	L	RED WHITE BLUE K	4.65	55.80
12	30-711-88	ROYAL H	XL	RED WHITE BLUE K	4.65	55.80
12	30-715-88	ROYAL H	2XL	RED WHITE BLUE K	4.65	55.80

TOTAL OF INVOICE 1,116.00

CARTONS 20
 SHIPPING WEIGHT 120
 TRACKING # 97438935